IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

BAIL APPLICATION NO.2109 OF 2005

Mr.Mohansingh Thakursingh Rajput ...Applicant

Versus

The State of Maharashtra ...Respondent

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Mr.Mihir Gheewala for Applicant.

Mr.K.V.Saste, A.P.P. for Respondent.

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CORAM: A.M.KHANWILKAR, J.

APRIL 1, 2005.

P.C.

1. Heard Counsel for the parties. Perused the record.

2. Indeed, the offence in question is a serious one. The Applicant has been named as one of the assailants by the injured Complainant. Role assigned to the Applicant is that he exhorted that the Complainant should be killed. As a consequence of which, co-accused gave two stab blows to the

injured. The prosecution case is that the motive behind the incident is that the Applicant's wife eloped with the Complainant's friend about nine years back. The fact that, that incident had taken place nine years back and till this distance of time, the Applicant did not take avenge, the motive attributed by the prosecution seems to be a weak circumstance.

3. I find substance in the argument canvassed on behalf of the Applicant that the prosecution has not disclosed the true picture or episode which resulted in the assault on the Complainant. It is seen that the Complainant visited the area where the Applicant was ordinarily working. It is not a case where the Applicant has tracked the Complainant and caused the assault. Besides, now investigation is complete and charge-sheet has been filed. The Applicant is the only earning member of his family and has the responsibility of his daughter, who is 16 years of age and there are no antecedents against the Applicant.

4. I also find substance in the submission

canvassed by the learned Counsel for the Applicant that the theory of the prosecution that the Applicant had caught hold of the Complainant and allowed the co-accused to stab the Complainant is belied by the fact that no blood stain marks were found on the clothes of the Applicant. Even that aspect requires to be explained by the prosecution.

5. Taking overall view of the matter, in the peculiar facts of the present case, I am inclined to grant bail to the Applicant on the following conditions:

(a) The Applicant is directed to be enlarged on bail in connection with C.R.No.386 of 2004 registered with Sion Police Station on executing personal bond in the sum of Rs.10,000/- (Rupees Ten Thousand) with one or two local sureties in the like amount.

(b) The Applicant shall report to the Investigating Officer once in a month on 1st Saturday of every English Calender Month between 10.00 a.m. to 2.00 p.m.

(c) The Applicant shall not influence the prosecution witnesses or tamper with the prosecution evidence in any manner whatsoever.

(d) The Applicant shall extend full co-operation to the Trial Court for early disposal of the trial and if the Trial Court is of the opinion that the Applicant is responsible for the delay of the trial, that fact be recorded in the Roznama, which will be a ground for cancellation of bail.

6. Application disposed of on the above terms.

A.M.KHANWILKAR, J.